IN HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Petition No. 1194 (M/S) OF 2002

Meghraj Singh & Ors. ….Petitioners

Versus

Mardan Singh & Ors. ..Respondents.

Sri Alok Singh, Senior Advocate assisted by Sri Bhardwaj learned counsel for the petitioner.
Sri Likpal Singh, Learned Counsel for the respondent No. 1 & 2.

Hon'ble Prafulla C. Pant – J

1. By means of this petition, moved under Article 227 of Constitution of India, the petitioners have sought quashing of order dated 10.10.2002, passed in Civil Appeal No. 57/1998, by Sri K.D. Bhatt, Learned Addl. District Judge/Fast Track Court, Hardwar whereby he has rejected the application for amendment in written statement, at the appellate stage.

2. Brief facts of the case, as narrated in the petition, are that respondent No.1&2 field a suit No.70/1991 in the court of Civil Judge (S.D.), Roorkee for seeking permanent prohibitory injunction against the defendants. According to the appellants the case property in suit situate in Khasra No.101/114/115 /116/117/118 on the south of Khasra No.120/1 and 120/2 belonging to the defendants. Defendant No.4, father of petitioner filed his written statement before the trial court specifically denying therein that property situate in Khasra No. 101/114/115/ 116/117/118. Learned Trial Court after recording evidence and hearing the parties decreed the suit of the plaintiffs. Aggrieved by which, Sri Mulki Singh (defendant), father of petitioners, preferred Civil Appeal No.57/1998 before the District Judge, Hardwar which was later transferred to the

Court of respondent NO.8 District Judge/2nd F.T.C., Hardwar. An amendment application was moved by Sri Mulki Singh, father of petitioner under order VI Rule 17 read with Section 151 of Code Civil Procedure, 1908, for in addition of the plea in paragraph No. 4 of the written statement to the effect that disputed property situate in Khasra No.119, 120/1 & 120/2. Meanwhile, the original appellants died and petitioners were substituted alongwith Smt. Santosh and Smt. Shrawan as legal representatives of the appellants, Respondent NO.8 after hearing the parties rejected the amendments application vide his order dated 10.10.2002. The said order has been challenged through this petition on the ground that the proposed amendments neither changes the nature of the suit nor is it bring contradictory plea, rather pleadings have been sought to be clarified by the defendant appellant.

3. A Counter affidavit has been field on behalf of plaintiffs-respondent No. 1 & 2, in which it has been stated that plaintiffs before the trial court moved an application under order VI Rule 5 read with Section 151 of the Code Civil Procedure, 1908, for better particulars with the prayer that the defendant No. 3 & 4 be directed to give Khasra No. of the property in suit. Sri Mulki Singh (defendant No.4), father of petitioners submitted his objections against the said application and when directed by the Court, submitted his reply stating that defendant No.3 & 4 do not know in which Khasra No. of the property in dispute is situate. It is further stated that now suit has already been decreed, and Learned appellate court has rightly rejected the amendment application as malafide. It is also stated by the

answering respondent that the application for amendment was moved only to frustrate to decree passed in favour of the plaintiffs.

4. I heard learned counsel for the contesting parties and perused the affidavits, counter affidavit alongwith annexures annexed thereto.

5. The short question for consideration before this court, is whether the impugned order, passed by the Appellate Court, rejecting the application for amendment, suffers from any illegality.

6. Learned counsel for the petitioners drew my attention to para No.4 of the plaint (copy annexure 1 to the petition) and reply in para-4 of the written statement (copy of annexure 2 of the petition), and submitted that since averment of the plaintiffs that property in suit lies on Khasra No.101 and Khasra No.114/ 115/ 116/117/118 of Village Sunaihati-Shalapur, has been denied as such the proposed amendment to the effect that disputed property lies in Khasra No. 120/1 and 120/2, only clarifies the pleadings, Had the facts been exactly the same, as learned counsel for the petitioners submitted before this court, I would have agreed with the argument advanced on behalf of the petitioners. But the other relevant facts, not disclosed in the petition rather established from the annexures annexed with the counter affidavit particularly annexure CA1, CA2 and CA3 show that before the trial court, plaintiffs has moved an application for better particulars from the defendant (father of petitioner) as to the Khasra No. on which according to him property in suit situate and in reply to said application for the better particulars, the

father of petitioners categorically submitted before the trial court as mentioned in annexure CA3, that the defendant is not aware of the Khasra No. on which property in suit situate. After this, particularly when the suit has been decreed in favour fo the plaintiffs, now at the appellate stage the proposed amendment disclosing Khasra No.120/1 and 120/2 can not be said to be bonafide, otherwise also in para 14 of the plaint (copy annexure 1 to the petition), it is made clear by the plaintiffs that Khasra No.120/1 & 120/2 belongs to the father of defendant No.2 and no specific denial has been given in the written statement (copy annexure 2 to the petition). Learned appellate court has given detailed reasons in six paged impugned order for rejection of the amendment application as the same has been found to be malafide and would only to defeat the fruits of the decree passed in the favour of plaintiffs-respondents. In view of the particulars of law laid down by the Apex Court in Heera Lal Vs. Kalayanmal (1998) 1 SCC 278, this court is in agreement with reasons mentioned by the appellate court (respondent No.8) for rejection of the amendment application moved by the defendants at appellate stage. As such since the proposed amendment was found to be malafide, this court is not inclined to interfere with the order as the same does not suffer from any illegality.

7. Accordingly the petition, under Article 227 of Constitution of India, is dismissed. Interim order dated 03.12.2002 is hereby vacated. No order as to costs.

Dated: November 23, 2004 **(Prafulla C. Pant-J)**

J.K.Jain